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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,643	04/02/2004	Guo-Hua Zheng	17662.002US1	2858

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
03/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/817,643	ZHENG ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,10-23,32 and 53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,10-23,32, 53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-5, 10-23, 32 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the term " highly stable" is indefinite because it is not known what would be considered as highly stable. The term is relative. The specification defines " little to no precipitate"; but what would be considered as little precipitate.

Claim 32 has the same problem as claim 1.

The new 112 rejections are necessitated by amendment.

Claims 1-5, 10-23,32,53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan (2003/0154974)

Morgan discloses a fiber composition from cereal grain such as barley and oats. The composition comprises beta glucan. The beta glucan gel , once formed, is washed with water to remove starch or protein or starch or protein that may have been hydrolyse. Starch may be removed by adding amylase; it is preferable during the glucan extraction to add an enzyme to reduce the average molecular weight of the glucan. The enzyme is cellulose. The low molecular weight beta glucan has an average molecular weight in the range of 5000-200000 daltons (5-200kd). (see paragraphs 0013, 0014, 0015, 0017, 0025, 0026, 0038.

Morgan discloses a fiber composition having the molecular weight as claimed. However, Morgan is silent with respect to the viscosity, the protein content, the fat content, the percent of beta glucan and the flavor intensity. However, the fiber composition in Morgan is prepared by substantially the same method as disclosed and

the composition has a molecular weight within the range claimed; thus, it is obvious the composition will have the same viscosity, the protein,beta glucan and flavor intensity as claimed. As to the fat content, it is known in the art that different variety of grains will have different lipid content, thus, the fat content can vary depending on the type of grain used. Furthermore, it is known in the art to remove fat using agent such as alcohol. It would have been obvious to one skilled in the art to remove the fat in the Morgan product using known agent when it is desired to obtain product having very low fat content. This would have been within the skill of one in the art. As to the composition being highly stable, the beta glucan composition disclosed by Morgan has a molecular weight within the range claimed; thus, it is expected the viscosity is within the range claimed. Thus, whatever property results from the viscosity and molecular weight, it is expected the same result is obtained in the Morgan product.

Morgan does not disclose the specific foods and the formulation for such foods as claimed.

Morgan discloses in paragraph 0019 to add the fiber composition to processed foods. Thus, it would have been obvious to one skilled in the art to add the fiber composition to any type of food when desiring to enrich such food with beta glucan to obtain the health benefits provided by beta glucan. Formulations for food products can vary. All the foods claimed are well known in the art; thus, it would have been within the skill of one in the art to determine the formulation for any particular food without undue experimentation.

The 102/103 rejection over Morgan is changed to a 103 rejection over Morgan.

In the response filed 9/29/08, applicant argues the beta-glucan in the Morgan process is distinguishable from the claimed glucan which has a neutral, non-lubricious mouthfeel and is not a gel. The characterization of a substance as imparting texture is a subjective evaluation that can vary among individual. While some people can characterize a substance as imparting a certain texture, others might not have the same evaluation. The claims recite a beta-glucan having a low molecular weight; Morgan discloses the same beta-glucan. How the beta-glucan is evaluated is a subjective interpretation and is not a patentable distinction. The claims do not exclude a gel. Furthermore, a gel is formed by performing additional steps such as shearing, heating, cooking and freezing. It would have been obvious to one skilled in the to not form a gel and eliminate these additional steps if a gel product is not the desirable end product. This would have been readily apparent to one skilled in the art. Applicant further argues that Morgan does not remove the fat; thus, one of skill in the art would know that it would not be stable in water because fat-containing compositions are not stable in water. This argument is not supported by factual evidence. Applicant has not linked the formation of precipitate to the presence of fat. Applicant has not shown that all fat-containing compositions are not stable in water. Also, stability in other compositions does not necessarily have the same definition as the claimed stability. The issue of the fat content is addressed in the rejection. Applicant further argues that Morgan does not disclose the molecular weight in claim 11. Morgan discloses the range of molecular weight ranges from 5kd-200 kd; this encompassed the range cited in claim 11. The disclosure at table 3 is only an example; it is not the whole teaching of the reference.

The argument over the Wang et al reference is not addressed because the rejection over this reference is hereby withdrawn.

Applicant's arguments filed 9/29/08 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 26, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794